

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA §
§
v. § CASE NO. 6:15-CR-00062-JDK-KNM
§
MICHAEL WILLIS, JR. (6), §

**AMENDED REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On July 24, 2019, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Michael Willis, Jr. The government was represented by James Gillingham, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Federal Public Defender, Matt Millslagle.

Defendant originally pled guilty to the offense of Conspiracy to Possess with Intent to Distribute Methamphetamine, a Class C felony. The offense carried a statutory maximum imprisonment term of 20 years. The United States Sentencing Guideline range, based on a total offense level of 23 and a criminal history category of V, was 84 to 105 months. On September 14, 2016, District Judge Michael H. Schneider sentenced Defendant to 60 months imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure and substance abuse testing and treatment. On March 26, 2019, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was required to refrain from excessive use of alcohol and required not to purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.

In its petition, the government alleges that Defendant submitted a urine specimen on April 1, 4, 10, and 18, 2019, and May 2, 9, and 17, 2019, that tested positive for marijuana.

Based on Fifth Circuit case law, the Court can find that illicit drug use constitutes possession. If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by submitting a urine sample that tested positive for marijuana, and thus possessing marijuana, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may revoke a term of supervision, extend the supervision, or modify conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of V, the Guideline imprisonment range for a Grade C violation is 7 to 13 months. U.S.S.G. § 7B1.4(a).

The Defendant and the government agreed to resolve the petition whereby Defendant would plead true to the allegation referenced above. In exchange, the government recommended to the Court a sentence of 9 months with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Michael Willis, Jr., be committed to the custody of the Bureau of Prisons for a term of imprisonment of 9 months with no supervised release to follow. The Court further **RECOMMENDS** that the place of confinement be Texarkana, Texas. Additionally, the Court **WITHDRAWS** its prior Report and Recommendation (Doc. No. 589) due to a clerical error contained in the document.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter, so the Court will present this Amended Report and Recommendation to District Jeremy D. Kernodle for adoption immediately upon issuance.

So ORDERED and SIGNED this 26th day of July, 2019.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE